

## **Exhibit C**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA

4 v. 83 Cr. 150 (MP)

5 GUY THOMAS FISHER, et al.,

6 Defendants.

7 -----x

8  
9 November 21, 1983  
9:00 a.m.

10

11

12 (Trial resumed)

13 (Jury deliberations resumed)

14 (At 1:50 p.m. a note was received from the jury)

15 (In open court; jury present)

16 (Court's Exhibit 126 was marked for  
17 identification)

18 THE COURT: The court received the following  
19 communication:

20 "Dear Judge Pollack:

21 "Please send in a fresh copy of the verdict  
22 sheet. The jury has reached a verdict."

23 Mr. Foreman, has the jury reached a verdict?

24 THE FOREMAN: Yes, your Honor, the jury has  
25 reached a verdict.

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1 THE COURT: Hand it to the clerk.

2 May I suggest, Mr. Forman, that you take this  
3 fresh form and omit the signature, other than the word  
4 "Forman," and then return both copies to me.

5 THE FOREMAN: Can I have a witness with me when  
6 I fill this out, one of the jurors come with me? Should I  
7 fill it out here?

8 THE COURT: Yes, you can do it right here. I  
9 will have both copies.

10 Could I suggest, Mr. Forman, that you just go  
11 into my robing room, where you will be comfortable, and use  
12 the desk there.

13 THE FOREMAN: All right.

14 THE COURT: Juror No. 2, would you assist,  
15 please.

16 (Pause)

17 THE COURT: May I suggest that each member of  
18 the jury please examine both of these. You will understand  
19 exactly why I sent for a clean copy.

20 The only change is on the last page, the last  
21 line.

22 (Pause)

23 THE COURT: The clerk may proceed to read the  
24 verdict.

25 THE CLERK: Ladies and gentlemen of the jury,

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1 listen to your verdict. You say you find as follows:

2 Count 1: Guy Thomas Fisher, guilty; Frank  
3 Alphonso James, guilty; Wallace Rice, guilty; Ishmael  
4 Muhammed, guilty; Thomas Forman, guilty; Elmer Thomas  
5 Morris, guilty; James Wheelings, guilty; Kenny Thomas,  
6 guilty.

7 Count 2: Guy Thomas Fisher, guilty.

8 Count 3: Frank James, guilty.

9 Count 4: Wallace Rice, guilty.

10 Count 5: Ishmael Muhammed, guilty.

11 Count 6: Thomas Forman, not guilty.

12 Count 7: Guy Fisher, guilty.

13 Count 8: Frank James, guilty; Wallace Rice,  
14 guilty.

15 Count 9: Frank James, guilty.

16 Count 11: Elmer Thomas Morris, guilty.

17 THE COURT: For distribution.

18 THE CLERK: For distribution.

19 THE COURT: Read that again, Mr. Clerk.

20 THE CLERK: Count 11: Elmer Thomas Morris,  
21 guilty for distribution.

22 Count 10: Frank James, guilty.

23 Count 12: Elmer Thomas Morris, guilty.

24 Count 13: Guy Thomas Fisher, guilty; Frank  
25 Alphonso James, guilty; Wallace Rice, guilty; Ishmael

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1 Muhammed, guilty; Thomas Forman, guilty; Elmer Thomas  
2 Morris, guilty; James Wheelings, guilty; Kenneth Thomas,  
3 guilty.

4 Count 14: Guy Thomas Fisher, guilty; Frank  
5 Alphonso James, guilty; Wallace Rice, guilty; Ishmael  
6 Muhammed, not guilty; Thomas Forman, not guilty; Elmer  
7 Thomas Morris, guilty; James Wheelings, guilty; Kenneth  
8 Thomas, not guilty.

9 Count 15: Guy Thomas Fisher, not guilty; Frank  
10 Alphonso James, not guilty; Wallace Rice, not guilty;  
11 Ishmael Muhammed, not guilty; Thomas Forman, not guilty;  
12 Elmer Thomas Morris, not guilty; James Wheelings, not  
13 guilty.

14 (Each juror, upon being asked "Is that your  
15 verdict," responded in the affirmative)

16 THE COURT: Now, ladies and gentlemen of the  
17 jury, at this stage of the proceedings in the trial of this  
18 case, there is one additional auxiliary task which we must  
19 impose on you. This will require that you retire to the  
20 jury room once again to return a special verdict on a form  
21 which which I have handed to you.

22 What you must now decide is whether those named  
23 defendants whom you have found guilty under counts 3  
24 through 6, 13 and 14, must forfeit property which they  
25 acquired as part of the continuing criminal enterprise

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1 and/or racketeering violations by them.

2 The law is that:

3 "Any person who is convicted of engaging in a  
4 continuing criminal enterprise shall forfeit to the United  
5 States (A) the profits obtained by him in such enterprise,  
6 and (B) any interest in, or property or contractual rights  
7 of any kind affording a source of influence over, the  
8 enterprise."

9 That is the law in the narcotic drug count.

10 The antiracketeering statute also provides that:

11 "Whoever violates any provision of Section 1962  
12 of this chapter shall forfeit to the United States (1) any  
13 interest he has acquired or maintained in violation of  
14 Section 1962, and (2) any interest in, or property or  
15 contractual right of any kind affording a source of  
16 influence over, any enterprise which he has established,  
17 operated, controlled, conducted, or participated in the  
18 conduct of, in violation of Section 1962."

19 The specific properties alleged to be subject to  
20 forfeiture to the United States under this provision are  
21 set out for you in the special verdict form I gave you.

22 In this respect, before you can return a special  
23 verdict forfeiting property to the United States, you must  
24 unanimously find beyond a reasonable doubt:

25 First, as to the property sought to be forfeited

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1 under the Section 848 continuing criminal enterprise counts,  
2 3, 4, 5 and 6, that those convicted under those four counts,  
3 the property forfeitable is derived from the profits of or  
4 was used in the continuing criminal enterprise which has  
5 been established by your principal verdict, as involved in  
6 the manufacture or distribution of narcotic drug controlled  
7 substances.

8 You may find such property is forfeitable, but  
9 you do not have to.

10 You will recall that the government contended  
11 that the evidence showed that Forman's residence and one of  
12 Rice's apartment buildings were used in connection with  
13 meetings or transactions related to narcotics distribution  
14 or other criminal activity charged.

15 Second, as to the property sought to be  
16 forfeited under the Section 1963 antiracketeering counts 13  
17 and 14, you must unanimously find beyond a reasonable doubt  
18 that those convicted under either of those two counts,  
19 either 13 or 14, the source of the property forfeitable is  
20 traceable from income from a pattern of racketeering  
21 activity and was used in an illegal enterprise the  
22 activities of which affect interstate commerce.

23 You may find such property is forfeitable, but  
24 you do not have to.

25 The government contended that the evidence

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1 showed, but you must find beyond a reasonable doubt, that  
2 certain of the properties were held for convenience of the  
3 defendants in the names of third parties. For instance, as  
4 to the defendant Rice, the house at 175 Kingsbridge Road is  
5 actually registered in the names of Marion Williams and  
6 Natalie Williams, the sister-in-law and wife, respectively,  
7 of defendant Rice.

8 Other properties were, according to the evidence,  
9 registered in the names of corporate entities which the  
10 government contends, according to the evidence, are owned  
11 by the defendants.

12 As to the defendant Wheelings, you may, if you  
13 wish, but you need not, disregard such third-party claims  
14 of ownership if you find that the property in question was  
15 acquired or maintained with profits or proceeds derived  
16 from the enterprise charged in counts 13 and 14. This is  
17 because the right to any such property is vested in the  
18 United States government at the moment that the properties  
19 were acquired or maintained by ways of the illegal acts  
20 prohibited by these statutes.

21 Your sole task is to decide if these properties,  
22 regardless of whose name in which they are now held, were  
23 acquired through drug profits and/or acquired or maintained  
24 with the profits or proceeds derived from racketeering  
25 activities and whether they should or should not be

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1 forfeited.

2 I will deliver to each juror a copy of these  
3 instructions so that you can follow them along with the  
4 verdict sheet that you have before you. After I do that I  
5 want to take a moment to talk to the lawyers to see whether  
6 there is anything they wish to call to my attention on  
7 which I may have misspoken or made an error.

8 Now, in giving this to you I want to underscore  
9 and emphasize what appears on the first page of these  
10 instructions, and I repeat:

11 What you must now decide is whether those named  
12 defendants whom you have found guilty under counts 3  
13 through 6, 13 and 14, must forfeit property. Anybody whom  
14 you did not find guilty under those counts, of course, is  
15 not in the position of being required to forfeit anything.  
16 It's only those who have been found guilty under those  
17 particular counts who may or may not, according to your  
18 determinations, based upon the evidence beyond a reasonable  
19 doubt, be required to forfeit anything.

20 Now, if you will just relax in your seats.

21 Is there anything that any counsel for the  
22 defendants wishes to call to my attention?

23 MR. DePETRIS: Could we see the special verdict  
24 sheet?

25 THE COURT: The form?

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1 MR. DePETRIS: Yes, your Honor.

2 THE COURT: That form, I should say, gentlemen,  
3 is the same as the form that you had in the blue-backed  
4 cover of the papers that were delivered to you yesterday.

5 (Court's Exhibit 127 was marked for  
6 identification)

7 THE COURT: The lawyers would like to see me  
8 briefly, and instead of the jurors sitting out here while  
9 that occurs, why don't you retire to the jury room for a  
10 few minutes, and then I will have you back if there are any  
11 supplemental instructions. You may take the forms with you  
12 in the meantime.

13 (Jury excused)

14 THE COURT: All right, gentlemen.

15 (In the robing room)

16 THE COURT: Just let me say for the benefit of  
17 all of you that the form that reached me originally had the  
18 true name of the forman, and for the same reasons as have  
19 applied heretofore I asked him to resubmit a different form  
20 just with the word "Forman" on it instead of his true name.  
21 This, of course, will become part of the archives of the  
22 court, so that you can see that it's identical with the one  
23 that was read. I myself compared it to make sure of that  
24 in the first place.

25 Now, let me hear about the supplemental

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1 instructions from the counsel for the defendants.

2 MR. DePETRIS: Judge, the reason I had requested  
3 that we see the court for a moment, it's my understanding  
4 of the forfeiture that there are different elements for a  
5 finding of forfeiture under RICO as opposed to 848.

6 THE COURT: That appears from the fact that I  
7 read the statutes to them.

8 MR. DePETRIS: I understand. But Judge, the  
9 special verdict form does not indicate whether they are  
10 forfeiting it under the 848 or they are forfeiting it under  
11 the RICO, and I think there should be that separate  
12 determination by the jury.

13 THE COURT: In this case, can it conceivably  
14 make any difference to anybody but Wheelings?

15 MR. LOPEZ: And Forman. Forman was acquitted of  
16 the 848.

17 THE COURT: Therefore, if he is forfeiting  
18 anything he could only be forfeiting under 13.

19 MR. LOPEZ: Right.

20 MR. DePETRIS: So you don't have the issue.

21 MR. LOPEZ: As long as the jury understands the  
22 difference of forfeiting under 848, where he is acquitted,  
23 and forfeiting under RICO.

24 THE COURT: I think that they should understand  
25 it after having read my lucid explanation, which took me a

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1 whole day yesterday to try to put together in English words.

2 I really don't think it applies to Forman, other  
3 than the possibility I may call their attention to the fact  
4 that the forfeiture provisions apply to Forman only in  
5 respect of count 13.

6 MR. LOPEZ: Right. That's satisfactory.

7 THE COURT: And the forfeiture provisions as to  
8 all the others will apply either to 848 or count 14, and  
9 you really don't have to except 13 in that circumstance.

10 Now, under those circumstances, is it really  
11 necessary, in your view, since the basis for the forfeiture  
12 under 3, 4, 5 and 6 and 13 and 14 requires in each instance  
13 that the source be the tainted source, traceable into the  
14 property? What difference does it make whether you label  
15 the result 848 or 1963?

16 Now, what I have done here I think is to give  
17 the defendants a benef which I have not found to exist in  
18 the cases, giving this jury the option to forfeit or not to  
19 forfeit, when the statute might be read to compel a  
20 forfeiture on a finding that the property is in that  
21 category. Under my charge, even if it's in the proper  
22 category, the jury can balk and say "We won't forfeit it."

23 MR. DePETRIS: I understand that was your  
24 Honor's charge.

25 THE COURT: That explains my charge. If there

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1 is any further comment, let me know.

2 MR. HEINEMANN: Your Honor, forgive me for not  
3 having followed completely, but is it explained that the  
4 only basis for the forfeiture as to Wheelings is the RICO  
5 count or is there an overlap with any other grounds -- of  
6 course, he was not even named in the 848 count -- in your  
7 charge.

8 THE COURT: I will charge the only basis of  
9 forfeiture as to Forman is the RICO conspiracy charge and  
10 the only basis of forfeiture as to Wheelings is the RICO  
11 conspiracy and substantive charge.

12 As to the others found guilty under counts 3, 4  
13 and 5, the basis of forfeiture is either the continuing  
14 criminal enterprise drug related charge or the RICO counts  
15 relating to a racketeering enterprise.

16 Does that take care of Mr. Forman and Mr.  
17 Wheelings, in the first instance?

18 MR. HEINEMANN: I believe it does, your Honor.

19 MR. LOPEZ: Yes.

20 THE COURT: Is it not correct, Mr. DePetrìs,  
21 that as to the others found guilty under counts 3, 4 and 5  
22 and 13 and 14 the basis of forfeiture is either the  
23 continuing criminal enterprise drug related charge or the  
24 RICO counts relating to a racketeering enterprise, without  
25 need of any separation, in view of the fact that the source

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1 must come from a tainted source?

2 MR. DePETRIS: I think that's true, Judge. I am  
3 trying to picture it in my mind. For example, with respect  
4 to Mr. Rice, with regard to the properties, they could find  
5 that the property was not purchased with narcotics proceeds,  
6 but could find on the basis of Mr. Rice's testimony that  
7 with regard to one of the properties, he received telephone  
8 calls there, and on that basis it would facilitate the  
9 enterprise, so they could forfeit it in that manner.

10 But I guess they could do that really under  
11 either of the two counts. So maybe it doesn't make any  
12 difference. I am not sure, Judge. It's confusing.

13 THE COURT: The government, do you have some  
14 amendments to my charge?

15 MR. ROMANO: The only additional language we  
16 would have asked is what I have written into that copy that  
17 you have, your Honor.

18 THE COURT: I am not going to do that. It's  
19 sufficiently obtuse now.

20 MR. ROMANO: Fine.

21 THE COURT: Is there anything else, gentlemen?

22 MR. HEINEMANN: Is the government going to sum  
23 up, your Honor? I just wanted to know.

24 THE COURT: No further summations. Summations  
25 are closed. This is a special verdict based on the

summations.

All right. Let's go back.

(In open court; jury present)

THE COURT: Ladies and gentlemen of the jury, I am reminded to tell you, in considering the special verdict, that the only basis of forfeiture as to Forman is his conviction on the RICO conspiracy charge, that the only basis of forfeiture as to Wheelings is the RICO conspiracy and substantive charge.

As to the others found guilty under counts 3, 4, 5 and 13 and 14, the basis of forfeiture is either the continuing criminal enterprise drug related charge or the RICO counts relating to a racketeering enterprise.

So that the thing for you to keep in mind is that the two exceptions are any forfeiture as to Forman would only be based on the RICO conspiracy charge, any forfeiture as to Wheelings can only be based on the RICO conspiracy and substantive charge. As to the others, it could be on either the drugs or the RICO charge.

I hope that after you have had a chance to study the instructions that accompany the special verdict this will be clear to you.

Thank you very much. You may go out and deliberate.

(Jury excused)

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1 THE COURT: We stand in recess.

2 (Recess)

3 (In open court; jury present)

4 THE COURT: Mr. Forman, have you agreed upon a  
5 verdict?

6 THE FOREMAN: Yes, we have, your Honor.

7 THE CLERK: Ladies and gentlemen of the jury,  
8 listen to your verdict. You say you find as follows:

9 You say that none of the property is to be  
10 forfeited.

11 (Each juror, upon being asked "Is that your  
12 verdict," responded in the affirmative)

13 THE COURT: Ladies and gentlemen, that completes  
14 this vacation that I promised you right at the start back  
15 there on October 11. It doesn't seem that we have been  
16 together that long. It seems much shorter. And yet day by  
17 day, it was a long experience.

18 Each one of you is to be congratulated for the  
19 public service and the performance of your civic duty. You  
20 paid attention to the case. Your interest didn't flag.  
21 Like good, substantial, solid citizens, you were never lax  
22 in the matter of getting in early and staying late, beyond  
23 the call of any other type of occupation. You considered  
24 the subject matter of the case carefully, as reflected by  
25 your verdicts.

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1           It's for the jury to humanize verdicts, as you  
2           have done with this special verdict, where you believe that  
3           is appropriate, regardless of the fact that beyond a  
4           reasonable doubt, beyond any reasonable doubt, your  
5           verdicts were correct, and in those cases where your  
6           verdicts were not guilty, they are thoroughly  
7           understandable and appropriate for jury consideration.

8           The guilty verdicts were unerringly dictated by  
9           a massive collection of evidence that was put together here  
10          in the interests of yourselves and all other good people in  
11          the community, where this type of conduct has to be dealt  
12          with and characterized as you have done it.

13          Now, a word as to the future. Your services are  
14          finished. You will all be taken back to your abodes. I am  
15          sure that Mr. Willie will see to it that you get your  
16          supper if you want it, and you certainly will be escorted  
17          home and your belongings taken to your respective places.

18          In a case such as this, of its importance, there  
19          are very often curiosity seekers who have something to sell  
20          and want to know whether you can furnish them with any  
21          information that they can retail. That's their business,  
22          and they can conduct their business and should conduct  
23          their business openly and freely.

24          However, you are under no obligation to anybody  
25          about anything that you did, that occurred, why, when and

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1       wherever. You are entitled to your peace of mind and your  
2       anonymity. I have tried all during this case to maintain  
3       your privacy in the best possible way.

4               I am not going to instruct you not to talk to  
5       people. I think people should decide those things  
6       according to their own judgment and common sense. But you  
7       must realize that other people listening to a story have a  
8       way of converting it to their own understanding.

9               They weren't in court. They didn't hear the  
10      evidence. They are not entitled to know what the processes  
11      of the jury are or were, unless you wish to reveal them.  
12      You can't sell them as your memoirs, because that would be  
13      not a nice thing to do. But this is a country of free  
14      speech and First Amendments and you are entitled to speak  
15      out or up any way you want.

16              However, my caution to you is that my long  
17      experience in the courthouse, which goes over half a decade,  
18      is that the only way that people find themselves  
19      embarrassed and harassed and annoyed and subjected to  
20      applause and to criticism is when they begin to reminisce  
21      or talk about their experiences.

22              Nobody need know any more than what the public  
23      already knows. A verdict was handed down. That's it. My  
24      caution to you is to think twice about anybody who  
25      approaches you for any reason whatsoever.

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1 If you feel impelled to have any assistance, the  
2 court and its officers will stand by to stop any unwanted  
3 approaches or experiences. All you need to do is to call  
4 the court -- and the telephones are in the telephone books --  
5 and we will do whatever is appropriate under the  
6 circumstances, should you so wish us to help you maintain  
7 your anonymity, your privacy and your peace of mind.

8 You go with the thanks of the court for your  
9 devoted and loyal services, and God bless you all.

10 (Jury excused)

11 THE COURT: A presentence report will be ordered  
12 here, and the date of sentence is fixed for January 12,  
13 1984, at 9:30 a.m., in this courtroom.

14 In view of the fact that the bail status of the  
15 defendants remains the same, there is no need now to make  
16 any inquiry about bail applications, and all defendants are  
17 remanded accordingly.

18 I think that the defendants should make whatever  
19 motions they have in mind for the protection of the record.

20 Mr. Gombiner.

21 MR. GOMBINER: Your Honor, the only motion I  
22 have to make at this point, especially in view of the  
23 acquittal on the conspiracy to murder government witnesses,  
24 I would ask that you reconsider the amount that bail has  
25 been fixed at.

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1 And as Mr. Moriarity has reminded me, for the  
2 protection of the record, I would also move that the  
3 conspiracy count against Mr. Fisher, the 848 count against  
4 Mr. Fisher, the sale of heroin count against Mr. Fisher and  
5 the two RICO counts against Mr. Fisher be dismissed in that  
6 they were against the weight of the evidence.

7 THE COURT: Motion denied.

8 Mr. Moriarity.

9 MR. MORIARITY: Your Honor, on behalf of Mr.  
10 James, I would equally request that all the counts of which  
11 Mr. James was found guilty be dismissed as being against  
12 the weight of the evidence, and I would stand on the record  
13 for my motion.

14 THE COURT: The motion is denied.

15 Mr. DePetrìs.

16 MR. DePETRIS: Yes, your Honor. I would make a  
17 similar application with regard to Mr. Rice as to the  
18 counts that he is named in, and I will ask, your Honor,  
19 with regard to the 848, that I be permitted to reserve and  
20 file a motion between now and the date of sentence, within  
21 ten days before the date of sentence.

22 THE COURT: A motion to what effect?

23 MR. DePETRIS: With regard to it being against  
24 the weight of the evidence as to the 848 count.

25 THE COURT: That motion then really is a test of

1 the facts and that motion is denied.

2 Mr. Fallick.

3 MR. FALLICK: Your Honor, I make a similar  
4 application on behalf of Mr. Muhammed.

5 THE COURT: Motion denied.

6 MR. LOPEZ: A like application as far as Forman  
7 is concerned as to the two counts that he is convicted of.

8 THE COURT: Motion denied.

9 MR. GEDULIG: The same application that my  
10 cocounsel has made on behalf of Mr. Morris.

11 THE COURT: Motion denied.

12 MR. HEINEMANN: Your Honor, may I reserve  
13 motions until ten days before sentence and submit them in  
14 writing?

15 THE COURT: No. You have seven days within  
16 which to make motions. But what motions do you have in  
17 mind? If they are motions addressed to the facts I will  
18 deal with them right now. Is there any constitutional  
19 question that you want to raise?

20 MR. HEINEMANN: I don't believe so, your Honor.  
21 I would make two motions, to grant judgment to Mr.  
22 Wheelings notwithstanding the verdict as against the weight  
23 of the evidence on counts 1, 13 and 14, and also that your  
24 Honor vacate or grant judgment to Mr. Wheelings on count 1  
25 as merged into count 13.

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1 THE COURT: Well, the latter motion is a matter  
2 that should be addressed to the question of sentencing --  
3 and you better look up the law on that subject -- and I  
4 will deal with it at that time.

5 Since all your motions appear to relate to  
6 questions of fact, those motions are denied.

7 MR. SERCARZ: Your Honor, I join in the motions  
8 of all prior counsel and I would move for a judgment of  
9 acquittal as to the defendant Thomas with regard to counts  
10 1 and 13, the two conspiracy counts, particularly in light  
11 of his acquittal on the substantive RICO count, count 14.

12 THE COURT: The motion is denied.

13 I believe that that completes the subject matter.  
14 Thank you all for the care and attention with which you  
15 presented the case. With minor exceptions, it was a highly  
16 well-tried professional effort on the part of all counsel,  
17 and I congratulate you all and thank you all.

18 The facts are the facts, and those are matters  
19 for the jury to pass upon.

20 (Pause)

21 MR. FARDELLA: I have Mr. Sercarz here with me  
22 on behalf of all defense counsel and I just would like to  
23 place in the record that pursuant to a previous court  
24 exhibit, the government represented that it was making a  
25 search of any handwritten notes which might exist regarding

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1 interviews of Calvin Glenn by Ruth Higgs or Mary Buckley.

2 That search was made at the time, during the  
3 presentation of the government's case, but I neglected to  
4 put on the record at the time that it disclosed the  
5 existence of no such notes.

6 MR. SERCARZ: I am present and I have heard the  
7 statements of Mr. Fardella and I will make them available  
8 to all defense counsel.

9 (Court adjourned)

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